A

LIEW SUNG YONG

v.

PP

B

HIGH COURT MALAYA, KUALA LUMPUR
AMELIA TEE ABDULLAH J
[CASE NO: 14-62-(445-448)-2009]
23 OCTOBER 2012

C

CRIMINAL PROCEDURE: *Appeal - Appeal against conviction - Filing of notice of appeal against sentence only - No appeal filed against conviction in notice of appeal - Issues as to conviction raised in petition of appeal - Failure to file application for leave to file appeal against conviction out of time - Whether there was in effect no appeal on*

D *conviction - Criminal Procedure Code, s. 307*

CRIMINAL PROCEDURE: *Appeal - Appeal against sentence - Petition of appeal raised issues as to conviction only - Failure to state particulars of errors of law in relation to sentence in petition of appeal - Whether appeal against sentence deemed to be withdrawn*

E

The appellant was charged before the Sessions Court for an offence under s. 12 of the Anti-Trafficking in Persons Act 2007. At the end of the defence case, the court found that the defence had failed to cast a reasonable doubt against the prosecution's

F case and sentenced the appellant accordingly. Dissatisfied, the appellant filed an appeal to this court. However, at the hearing of the appeal, the respondent raised a preliminary objection to the effect that the said appeal was defective and incompetent on the grounds that: (i) the appellant had filed a notice of appeal against

G sentence only; and (ii) the petition of appeal raised issues as to conviction only. Further, it was the respondent's argument that the appellant's failure to file an application for leave to file a notice of appeal out of time was fatal and thus, the appellant's appeal against conviction could not be heard.

H

Held (dismissing appeal; affirming decision of the Sessions Court):

I

(1) There was no provision in s. 307 of the Criminal Procedure Code for an appeal to be made against "pertuduhan" or charges. From the notice of appeal herein, it was clear that the appeal was against "kesemua pertuduhan dan hukuman". Hence, the position in law in respect of this case was that at

the end of the 14 days allowed for filing the notice of appeal, the appellant had only filed an appeal against the sentences that were imposed. There was no appeal filed against the convictions. Neither had the appellant filed any application for leave to file an appeal against conviction out of time. Since this was the case, there was in effect no appeal before this court on conviction and any appeal against conviction sought to be raised by the appellant would be incompetent and the court would dismiss it accordingly. (paras 7 & 10)

(2) Although the appellant had stated in the notice of appeal that the appeal was against sentence, however, all the particulars in the petition of appeal were in relation to the appellant's conviction and no particulars of errors of law in relation to the sentence had been set out in it. Hence, where the petition of appeal does not contain any particulars of the points of law or of fact to which the Sessions Court judge was alleged to have erred in relation to the sentences imposed, the court would deem that the appeal against sentence had in fact been withdrawn. (paras 11 & 13)

Case(s) referred to:
Chua Tiang Chang v. PP [2011] 1 LNS 774 CA ***(refd)***
Siew Khow Seng v. PP [2011] 9 CLJ 84 CA ***(refd)***
Veerasingam v. PP [1957] 1 LNS 93 HC ***(refd)***
Yan Wing Lee v. PP [1994] 2 CLJ 453 HC ***(refd)***

Legislation referred to:
Anti-Trafficking in Persons Act 2007, s. 12
Criminal Procedure Code, s. 307(1)

For the appellant - K Balaguru (Aida Abdul Razak with him); M/s Jesvinderjit Singh
For the respondent - Faizah Mohd Salleh; DPP

Reported by Kumitha Abd Majid

JUDGMENT

Amelia Tee Abdullah J:

[1] The appellant, Liew Sung Yong, was charged before the Sessions Court Jenayah 14 at Kuala Lumpur for an offence under s. 12 of the Anti-Trafficking in Persons Act 2007 for trafficking in

persons for the purpose of exploitation in respect of each case. The four charges in the four cases against the appellant reads as follows:

Kes 62-445-09:

Bahawa kamu pada 8 Ogos 2009 jam lebih kurang 4.30 pagi, di No. 44, Jalan Lanchang, Taman Sri Bahtera, di dalam daerah Cheras, Wilayah Persekutuan Kuala Lumpur, telah memperdagangkan La Amalia 1 perempuan warganegara Indonesia Pasport tiada bagi maksud eksploitasi seks dengan demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 12 Akta Antipemerdagangan Orang 2007.

Kes 62-446-09:

Bahawa kamu pada 8 Ogos 2009 jam lebih kurang 4.30 pagi, di No. 44, Jalan Lanchang, Taman Sri Bahtera, di dalam daerah Cheras, Wilayah Persekutuan Kuala Lumpur, telah memperdagangkan Deviyana Binti Didik 1 perempuan warganegara Indonesia Pasport tiada bagi maksud eksploitasi seks dengan demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 12 Akta Antipemerdagangan Orang 2007.

Kes 62-447-09:

Bahawa kamu pada 8 Ogos 2009 jam lebih kurang 4.30 pagi, di No. 44, Jalan Lanchang, Taman Sri Bahtera, di dalam daerah Cheras, Wilayah Persekutuan Kuala Lumpur, telah memperdagangkan Susi Sukarni 1 perempuan warganegara Indonesia Pasport tiada bagi maksud eksploitasi seks dengan demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 12 Akta Antipemerdagangan Orang 2007.

Kes 62-449-09:

Bahawa kamu pada 8 Ogos 2009 jam Iebih kurang 4.30 pagi, di No. 44, Jalan Lanchang, Taman Sri Bahtera, di dalam daerah Cheras, Wilayah Persekutuan Kuala Lumpur, telah memperdagangkan Elly Kartini 1 perempuan warganegara Indonesia Pasport tiada bagi maksud eksploitasi seks dengan demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 12 Akta Antipemerdagangan Orang 2007.

[2] At the close of the prosecution case, and after the prosecution had called eight witnesses, the learned Sessions Court judge found that a *prima facie* case had been made out in respect

of each of the four charges and had called for the appellant to enter on his defence. For his defence, the appellant gave evidence on oath.

[3] At the close of the defence case, the learned Session Court judge found that the defence had failed to cast a reasonable doubt as to the truth of the prosecution case. He found that the prosecution had succeeded in proving its case against the appellant beyond a reasonable doubt on all the charges. After hearing and considering the appellant's plea in mitigation as well as the submissions of the learned deputy in urging for a deterrent sentence, the learned Sessions Court judge had sentenced the appellant to five years imprisonment with effect from that date 22 April 2011 in respect of each of the four charges.

[4] On 29 April 2011, the appellant, through his solicitors Messrs KL Chee & Co, filed a notice of appeal. The petition of appeal, citing 11 grounds of appeal, was filed on 4 November 2011.

[5] At the hearing of the appeal before this court, the respondent had raised a preliminary objection to the effect that the appeal was defective and incompetent on the grounds that:

(i) The appellant had filed a notice of appeal against sentence only; and

(ii) The petition of appeal raises issues as to conviction only.

[6] The court has carefully perused the notice of appeal which, for ease of reference, is reproduced below:

> ADALAH DIBERI NOTIS bahawa Perayu di atas merayu kepada Mahkamah Tinggi terhadap keputusan Tuan Hakim Mahkamah Sesyen Jenayah (14) Kuala Lumpur Tuan Ahmad Zamzani bin Haji Mohd Zain yang mana Tuan Hakim yang bijaksana telah menjatuhkan hukuman penjara selama lima (5) tahun bagi keempat-empat pertuduhan terhadap Perayu. Kesemua pertuduhan dituduh di bawah Seksyen 12 Akta Antipemerdagangan Orang 2007. Hukuman tersebut berjalan serentak dan berkuatkuasa dari tarikh jatuh hukum (22/04/2011). Rayuan ini adalah terhadap kesemua pertuduhan dan hukuman yang telah dijatuhkan bagi kesalahan di bawah Seksyen tersebut.

[7] From the notice of appeal, it is clear that the appeal is against "kesemua pertuduhan dan hukuman". The court agrees that there is no provision in s. 307 of the Criminal Procedure Code for an appeal to be made against "pertuduhan" or charges. As such, the position in law in respect of this case is that at the end of the 14 days allowed for filing the notice of appeal, the appellant has only filed an appeal against the sentences that were imposed. No appeal was filed against the convictions. Neither has the appellant filed any application for leave to file an appeal against, conviction out of time.

[8] The respondent has submitted that the failure of the appellant to file an application for leave to file a notice of appeal out of time is fatal with the result that the appellant's appeal against conviction cannot be heard. Reliance is placed on the case of *Veerasingam v. PP* [1957] 1 LNS 93 where Thomson CJ held as follows:

> It is well settled law that rights of appeal can only be given by statute and that in order to ascertain what these rights are and their extent it is necessary to examine the provisions of the statute which gives them.
>
> The question of rights of appeal in criminal cases from Subordinate Courts is dealt with in s. 304 and the succeeding sections of the Criminal Procedure Code. Putting aside the question of appeals against sentences, s. 307 of the Code provides that any person dissatisfied with any judgment of a Subordinate Court to which he is a party "may prefer an appeal ... against such judgment ... in respect of any error in law or in fact" within a period of ten days. This is to be done by filing a Notice of Appeal. The Court is then required to serve upon the appellant a signed copy of the grounds of decision (or, if longer, within ten days from being supplied with a copy of the Notes of Evidence if asked for) the appellant must lodge a Petition of Appeal which "shall contain definite particulars of the points of law or of fact in regard to which the Court appealed from is alleged to have erred." If the Petition of Appeal is not lodged within the prescribed time "the appeal shall be deemed to have been withdrawn."
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> It will be noticed that an appeal may only be preferred "in respect of any error in law or in fact" and that the Petition of Appeal is to "contain definite particulars of the points of law or fact in regard to which the Court appealed from is alleged to have erred." As a matter of strict construction, and this is a case where

the statutory provisions ought to be strictly construed, then if the matter rested on a construction of s. 307 this coincidence of language would seem to point to the conclusion that there is no general right of appeal against conviction but that a party can only appeal against conviction in respect of errors in law or in fact which he must specify in "his Petition of Appeal and that it is in support of that appeal only that the appellant can be heard under s. 313."

[9] In the more recent case of *Chua Tiang Chang v. PP* [2011] 1 LNS 774, the appellant had not filed the notice of appeal within the extended time granted by the Court of Appeal. There the Court of Appeal found the preliminary objection raised by the learned Deputy Public Prosecutor to be well founded. The Court of Appeal was of the view that "Laxity in relation to compliance with the court's rules must not be tolerated and has to be curbed". For an application for extension of time to succeed strong grounds or substantial reasons must be advanced for the court to exercise its discretion in the appellant's favour. The Court of Appeal thus held the appeal to be incompetent and dismissed it accordingly.

[10] In this case the court agrees with the submissions of the learned Deputy Public Prosecutor that since the appellant had not filed an appeal against conviction within the time frame as stipulated in s. 307(1) of the Criminal Procedure Code, and there is no application for enlargement of time to file the a notice of appeal against conviction, there is in effect no appeal before this court on conviction. The court finds that any appeal against conviction sought to be raised by the appellant to be incompetent and the court will dismiss it accordingly.

[11] As regards the appellant's appeal against sentence, the court noted that although the appellant had stated in the notice of appeal that the appeal was against sentence ("terhadap ... hukuman"), however all the particulars in the petition of appeal were only in relation to the conviction of the appellant. The court has carefully perused the petition of appeal and agrees with the submissions of the learned deputy that none of the 11 grounds relate to, or was an appeal against the sentence. No particulars of errors of law or fact in relation to the sentence have been set out in the petition of appeal.

[12] The Court of Appeal in the case of *Siew Khow Seng v. PP* [2011] 9 CLJ 84 had agreed with the decision in *Yan Wing Lee v. PP* [1994] 2 CLJ 453 where the High Court had held that the appellant must abide by the petition of appeal and that learned counsel for the appellant should submit solely on the points of law or fact as set out in the petition of appeal. As stated by His Lordship Abdul Malik bin Haji Ishak JC (as His Lordship then was) in *Yan Wing Lee (supra)*:

> From the authorities cited above, the legal situation appears to be that the appellant must abide by the petition of appeal and the learned Counsel for the appellant, in all fairness to the learned deputy public prosecutor, should submit solely on the points of law or fact as set out in the petition of appeal and should not dabble on points of law or fact not set out in the petition of appeal. *In my judgment, s. 307(vi) of the Criminal Procedure Code (F.M.S. Cap 6) is couched mandatorily and any failure to observe it would be fatal.* In the circumstances, this Court is entitled to disregard the grounds that were not itemised in the petition of appeal.
>
> (emphasis added)

[13] In the present case where the petition of appeal does not contain any particulars of the points of law or of fact in regard to which the Sessions Court Judge is alleged to have erred in relation to the sentences that were imposed by him, the court will deem that the appeal against sentence has, in fact, been withdrawn.

Conclusion

[14] In conclusion and to summarise, the court finds that there is no appeal against conviction in the notice of appeal that was filed. And although there was an appeal against sentence in the notice of appeal, there were no grounds relating to an appeal against sentence in the petition of appeal. The appeal against sentence is thus deemed to have been withdrawn.

[15] Accordingly, the court had dismissed the appellant's appeal and affirmed the decision and sentence of the learned Sessions Court Judge.